

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 13
: :
DEMETRIUS LEO PINKETT and : CASE NO. 14-67504 – MHM
DANA LYNN PINKETT, :
: :
DEBTORS. :

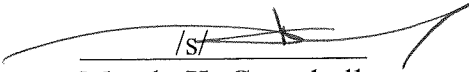
**NOTICE OF HEARING ON CHAPTER 13 TRUSTEE'S MOTION FOR
DIRECTION REGARDING DISPOSITION OF UNDISTRIBUTED FUNDS**

YOU ARE HEREBY NOTIFIED that the Chapter 13 Trustee in this case has filed a Motion for Direction Regarding Disposition of Undistributed Funds.

All objections must state the grounds therefore and must be filed with the Clerk, United States Bankruptcy Court: Richard B. Russell Building, U.S. Courthouse, 75 Spring Street, SW, Room 1340, Atlanta, GA 30303-3367. A copy must be furnished to the Chapter 13 Trustee: Adam M. Goodman, Suite 200, 260 Peachtree Street, Atlanta, Georgia 30303.

A hearing will be held on June 19, 2015, at 11:00am in Courtroom 1204 in the Richard B. Russell Building, 75 Spring Street, SW, Atlanta, GA 30303-3367.

DATED: June 8, 2015.



Mandy K. Campbell
GA Bar 142676
Staff Attorney for Adam M. Goodman
Chapter 13 Trustee
260 Peachtree Street, Suite 200
Atlanta, GA 30303
678-510-1444

UNITED STATES BANKRUPTCY COURT
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IN RE:	:	CHAPTER 13
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**CHAPTER 13 TRUSTEE'S MOTION FOR DIRECTION REGARDING
DISPOSITION OF UNDISTRIBUTED FUNDS**

COMES NOW, Adam M. Goodman, Standing Chapter 13 Trustee, and files this Motion for Direction Regarding Disposition of Undistributed Funds, and shows the Court as follows:

1.

Debtors filed this case under Chapter 13 on September 5, 2014. The Chapter 13 plan was not confirmed. Debtor's case was dismissed on May 15, 2015 (Doc. No. 41). Prior to dismissal, Trustee has received a total of \$5,467.49.¹ Trustee received \$246.03 in statutory fees and disbursed adequate protection totaling \$250.00 to Farmers Furniture, \$250.00 to Prestige Financial Services, Inc., and \$500.00 to Coastal Credit. Trustee is in possession of \$4,221.46, as payments made under the Chapter 13 plan. This matter concerns the administration of the estate and is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

¹ Trustee also received \$614.83 after dismissal of the case, and Trustee received a statutory fee of \$33.82. Trustee will refund the fee of \$33.82 and disburse the post-dismissal payment of \$614.83 to Debtors, as this payment was made after dismissal and the funds unequivocally belong to Debtors.

2.

The terms of the Chapter 13 plan provide that should the case be dismissed or converted prior to confirmation, Trustee would disburse the funds on hand to Debtor's counsel for fees up to \$900.00, after payment of any unpaid filing fees, Trustee's fees and expenses, and adequate protection payments. On information and belief, the source of funds on hand is from Debtor's income. Trustee would propose to disburse the funds to the following party:

* \$4,221.46 to Debtor.

3.

Code § 1326(a) provides that the debtor shall make payments to the trustee, and subsection (a)(2) directs that the trustee retain the funds until confirmation or denial of confirmation. If the plan is not confirmed, the trustee is to return "any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b)."

4.

Trustee's standard practice in disbursing funds upon conversion or dismissal of a Chapter 13 case finds its genesis at least since *In re Lennon*, 65 B.R. 130 (Bankr. N.D. Ga. 1986) (J. Cotton). In *Lennon* the debtor converted her unconfirmed Chapter 13 case to Chapter 7, and the court ruled that the plan payments in the trustee's possession would be turned over to the debtor as opposed to the Chapter 7 trustee.

5.

On May 18, 2015, the Supreme Court of the United States issued its decision in *Harris v. Viegelaahn*, 2015 WL 2340847 (2015). The Court decided that funds in the Chapter 13 trustee's possession in a confirmed case that converted to Chapter 7 should be turned over to the debtor as opposed to disbursed to creditors, and funds were not vested in the creditors "until it is distributed to them." *Id.* at *7. The Court focused its decision on § 348(e) and (f), as well as Rule 1019. The Court found that the *res judicata* effect of

§ 1327(a) and the trustee's duty to distribute payments under § 1326(a)(2) were of "no force here, for they ceased to apply once the case was converted to Chapter 7." *Id.* The Court also stated that the trustee "continuing to distribute funds to creditors pursuant to the defunct Chapter 13 plan is not an authorized 'wind-up' task." *Id.*

6.

Harris is factually distinguishable as it involved a confirmed plan that was converted. However, the above-referenced statements made in the Supreme Court's opinion, the different but corollary provisions of 11 U.S.C. §§ 348(e) and 349(b),² and the requirement in 11 U.S.C. § 1326(a)(2) that the Trustee in unconfirmed cases "shall" return to the Debtor payments "not previously paid and not yet due and owing to creditors...after deducting any unpaid claim allowed under section 503(b)," all raise concerns about disbursing funds to any party other than the debtor without a determination as to claims allowed under § 503(b).³

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court provide direction as to how the funds in his possession should be disbursed, and for other such relief as the Court deems just and proper.

Dated: This the 8th day of June, 2015.

² See *In re Hamilton*, 493 B.R. 31, 38 (Bankr. M.D. Tenn. 2013) (In a post-confirmation case, citing legislative history, the court noted that "§ 349(b) is broad, and serves to undo the bankruptcy case to the extent possible---to put all parties in the positions they were in before the case was filed." Citing S.Rep. No. 95-989, 49, reprinted in 1978 U.S.C.C.A.N. 5787, 5835. The court found § 349(b)(3) unambiguous, and that at dismissal, unless the court ordered otherwise, all postpetition earnings vest in the debtor.)

³ Compare *Williams v. Marshall*, 526 B.R. 695 (N.D. Ill. 2014); *In re Rogers*, 519 B.R. 267 (Bankr. E.D. Ark. 2014); *In re Weatherspoon*, 2014 WL 61405 (Bankr. W.D. Wash. 2014); and *In re Garriis*, 496 B.R. 343 (Bankr. S.D.N.Y. 2013).

Respectfully submitted,



/s/

Mandy K. Campbell
GA Bar 142676
Staff Attorney for Adam M. Goodman
Chapter 13 Trustee
260 Peachtree Street, Suite 200
Atlanta, GA 30303
678-510-1444

14-67504-MHM

CERTIFICATE OF SERVICE

This is to certify that I have this day served:

DEBTORS:

Demetrius Leo Pinkett
Dana Lynn Pinkett
705 Asbury Way
Lithonia, GA 30058

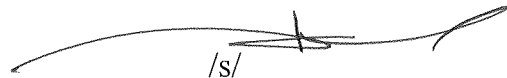
DEBTORS' ATTORNEY:

Jonathan R. Melnick
3355 Lenox Road
Suite 750
Atlanta, GA 30326

AND ALL CREDITORS ON THE ATTACHED MATRIX

with a copy of the foregoing Chapter 13 Trustee's Motion for Direction Regarding Disposition of Undistributed Funds by depositing in the United States Mail a copy of the same in a properly addressed envelope with adequate postage thereon.

DATED: June 8, 2015.



/s/
Mandy K. Campbell
GA Bar 142676
Staff Attorney for Adam M. Goodman
Chapter 13 Trustee
260 Peachtree Street, Suite 200
Atlanta, GA 30303
678-510-1444

Label Matrix for local noticing
113E-1
Case 14-67504-mhm
Northern District of Georgia
Atlanta
Mon Jun 8 13:46:00 EDT 2015

(p)FARMERS FURNITURE
ATTN CORPORATE CREDIT DEPT
PO BOX 1140
DUBLIN GA 31040-1140

American InfoSource LP as agent for
Midland Funding LLC
PO Box 268941
Oklahoma City, OK 73126-8941

Coastal Credit
2110 New Market Pkwy.
Suite 101
Marietta, GA 30067-9308

Dekalb Medical Center
P.O. Box 723537
Atlanta, GA 31139-0537

Division of Child Support Services
2910 Miller Rd.
Decatur, GA 30035-4264

ECMC/NCO Financial Systems, Inc
5625 Frantz Rd.
Dublin, OH 43017

Georgia Department of Labor
P.O. Box 3433
Atlanta, GA 30302-3433

(p)GEORGIA DEPARTMENT OF REVENUE
COMPLIANCE DIVISION
ARCS BANKRUPTCY
1800 CENTURY BLVD NE SUITE 9100
ATLANTA GA 30345-3202

Georgia Dept. of Labor
Suite 826
148 Andrew Young Inter. Blvd., NE
Atlanta GA 30303-1751

Georgia Dept. of Labor
Suite 910
148 Andrew Young Inter. Blvd., NE
Atlanta GA 30303-1751

Internal Revenue Service
P.O Box 7346
Philadelphia, PA 19101-7346

Ocwen Loan Servicing
P.O. Box 24738
West Palm Beach, FL 33416-4738

PRESTIGE FINANCIAL SERVICES
PO BOX 26707
SALT LAKE CITY, UT 84126-0707

Prestige Financial
P.O. Box 26397
Salt Lake City, UT 84126

Radiology Associates
P.O. Box 279
Norcross, GA 30091-0279

Sallie Mae
P.O. Box 9635
Wilkes-Barre, PA 18773-9635

Southeastern Pathology
P.O. Box 30309
Charleston, SC 29417-0309

Trugreen
c/o Transworld Systems
507 Prudential Rd.
Horsham, PA 19044-2308

U. S. Attorney
600 Richard B. Russell Bldg.
75 Spring Street, SW
Atlanta GA 30303-3315

Vila Corder
4031 Sweetwater Pkwy.
Ellenwood, GA 30294-1576

Adam M. Goodman
Adam M. Goodman, 13 Trustee
Suite 200
260 Peachtree Street
Atlanta, GA 30303-1236

Dana Lynn Pinkett
705 Asbury Way
Lithonia, GA 30058-2920

Demetrius Leo Pinkett
705 Asbury Way
Lithonia, GA 30058-2920

Jonathan R. Melnick
Suite 750
3355 Lenox Road
Atlanta, GA 30326-1353

FARMERS FURNITURE
Attn: Corporate Credit
P.O. Box 1140
Dublin, GA 31040

(d) Farmers Furniture
Attn: Corporate Credit
P.O. Box 1140
Dublin, GA 31040

(d) Farmers Furniture
P.O. Box 1140
Dublin, GA 31040

Georgia Department of Revenue
Bankruptcy Section
P.O. Box 161108
Atlanta, GA 30321

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(u) Ocwen Loan Servicing, LLC

End of Label Matrix	
Mailable recipients	24
Bypassed recipients	1
Total	25